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c 295 Mortgage Brokers Act

Ontario

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CHAPTER 295

Mortgage Brokers Act

1.—(1) In this Act,

Interpre-
tation

- (a) “business premises” does not include a dwelling;
- (b) “Director” means the Director of the Consumer Protection Division of the Ministry of Consumer and Commercial Relations;
- (c) “dwelling” means any premises or any part thereof occupied as living accommodation;
- (d) “equity share” means a share of a class of shares that carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing;
- (e) “Minister” means the Minister of Consumer and Commercial Relations;
- (f) “mortgage” has the same meaning as in the *Mortgages Act*;
- (g) “mortgage broker” means a person who carries on the business of lending money on the security of real estate, whether the money is his own or that of another person, or who holds himself out as or who by an advertisement, notice or sign indicates that he is a mortgage broker, or a person who carries on the business of dealing in mortgages;
- (h) “non-resident” means an individual, corporation or trust that is not a resident;
- (i) “prescribed” means prescribed by this Act or the regulations;
- (j) “registered” means registered under this Act;
- (k) “Registrar” means the Registrar of Mortgage Brokers;
- (l) “regulations” means the regulations made under this Act;

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c. 296

(m) "resident" means,

- (i) an individual who is a Canadian citizen or has been lawfully admitted to Canada for permanent residence and who is ordinarily resident in Canada,
- (ii) a corporation that is incorporated, formed or organized in Canada and that is controlled directly or indirectly by persons who are residents or by a resident trust, or
- (iii) a trust that is established by resident individuals or a resident corporation or one in which resident individuals or corporations hold more than 50 per cent of the beneficial interest;

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c. 274

(n) "Tribunal" means The Commercial Registration Appeal Tribunal under the *Ministry of Consumer and Commercial Relations Act*. R.S.O. 1970, c. 278, s. 1; 1971, c. 50, s. 59 (1); 1972, c. 1, ss. 23 (5), 45 (1, 2); 1973, c. 103, s. 1; 1974, c. 28, s. 1 (1).

Control

(2) For the purposes of subclause (1) (m) (ii), a corporation shall be deemed to be controlled by another person or corporation or by two or more corporations if,

- (a) equity shares of the first-mentioned corporation carrying more than 50 per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of such other person or corporation or by or for the benefit of such other corporations; and
- (b) the votes carried by such securities are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned corporation. 1974, c. 28, s. 1 (2).

Exemptions

2. This Act, except sections 11 to 21, does not apply to,

R.S.O. 1980,
cc. 218, 221

(a) corporations registered under the *Insurance Act* or the *Investment Contracts Act*;

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cc. 249, 431

(b) corporations registered under the *Loan and Trust Corporations Act* that are not also registered under the *Real Estate and Business Brokers Act*;

(c) banks under the *Bank Act* (Canada);

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c. 40 (Can.)

(d) credit unions;

(e) non-resident insurance companies loaning on the security of first mortgages or acquiring first mortgages of Ontario real estate by virtue of a licence in mortmain or under section 340 of the *Corporations Act*;

R.S.O. 1980,
c. 95

(f) an employee of a party to a mortgage transaction when the employee is acting for or on behalf of his employer. R.S.O. 1970, c. 278, s. 2; 1975, c. 28, s. 1.

3.—(1) There shall be a Registrar of Mortgage Brokers who shall be appointed by the Lieutenant Governor in Council.

Registrar

(2) The Registrar may exercise the powers and shall perform the duties conferred or imposed upon him by or under this Act under the supervision of the Director. R.S.O. 1970, c. 278, s. 3.

Duties of
Registrar

4.—(1) No person shall carry on business as a mortgage broker unless he is registered by the Registrar under this Act.

Registration
required

(2) A registered mortgage broker shall not carry on business in a name other than the name in which he is registered or invite the public to deal at a place other than that authorized by the registration.

Name and
place of
business

(3) No person shall publish or cause to be published in writing any representation that he is registered under this Act.

Publica-
tion of
registration

(4) Every person who is registered as a real estate broker under the *Real Estate and Business Brokers Act* shall, so long as he is so registered, be deemed to be registered as a mortgage broker under this Act. R.S.O. 1970, c. 278, s. 4.

Registered
real estate
brokers
R.S.O. 1980,
c. 431

5.—(1) An applicant is entitled to registration or renewal of registration by the Registrar except where,

Registration
of mortgage
brokers

(a) having regard to his financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of his business; or

- (b) the past conduct of the applicant affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty; or
- (c) the applicant is a corporation and,
 - (i) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business, or
 - (ii) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty; or
- (d) the applicant is carrying on activities that are, or will be, if the applicant is registered, in contravention of this Act or the regulations; or
- (e) the applicant fails to comply with section 8 or 9, as the case may be. 1971, c. 50, s. 59 (2), *part*; 1973, c. 103, s. 2.

Conditions of
registration

(2) A registration is subject to such terms and conditions to give effect to the purposes of this Act as are consented to by the applicant, imposed by the Tribunal or prescribed by the regulations. 1971, c. 50, s. 59 (2), *part*.

Refusal to
register

6.—(1) Subject to section 7, the Registrar may refuse to register an applicant where in the Registrar's opinion the applicant is disentitled to registration under section 5.

Revocation

(2) Subject to section 7, the Registrar may refuse to renew or may suspend or revoke a registration for any reason that would disentitle the registrant to registration under section 5 if he were an applicant, or where the registrant is in breach of a term or condition of the registration. 1971, c. 50, s. 59 (2), *part*.

Notice of
proposal
to refuse
or revoke

7.—(1) Where the Registrar proposes to refuse to grant or renew a registration or proposes to suspend or revoke a registration, he shall serve notice of his proposal, together with written reasons therefor, on the applicant or registrant.

Notice
requiring
hearing

(2) A notice under subsection (1) shall inform the applicant or registrant that he is entitled to a hearing by the Tribunal if he mails or delivers, within fifteen days after

the notice under subsection (1) is served on him, notice in writing requiring a hearing to the Registrar and the Tribunal, and he may so require such a hearing.

(3) Where an applicant or registrant does not require a hearing by the Tribunal in accordance with subsection (2), the Registrar may carry out the proposal stated in his notice under subsection (1). Powers of Registrar where no hearing

(4) Where an applicant or registrant requires a hearing by the Tribunal in accordance with subsection (2), the Tribunal shall appoint a time for and hold the hearing and, on the application of the Registrar at the hearing, may by order direct the Registrar to carry out his proposal or refrain from carrying out his proposal and to take such action as the Tribunal considers the Registrar ought to take in accordance with this Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of the Registrar. Powers of Tribunal where hearing

(5) The Tribunal may attach such terms and conditions to its order or to the registration as it considers proper to give effect to the purposes of this Act. Conditions of order

(6) The Registrar, the applicant or registrant who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section. Parties

(7) Notwithstanding subsection (1), the Registrar may cancel a registration upon the request in writing of the registrant in the prescribed form surrendering his registration. Voluntary cancellation

(8) Where, within the time prescribed therefor or, if no time is prescribed, before expiry of his registration, a registrant has applied for renewal of his registration and paid the prescribed fee, his registration shall be deemed to continue, Continuation of registration pending renewal

(a) until the renewal is granted; or

(b) where he is served with notice that the Registrar proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing has expired and, where a hearing is required, until the Tribunal has made its order.

(9) Notwithstanding that a registrant appeals from an order of the Tribunal under section 11 of the *Ministry of Consumer and Commercial Relations Act*, the order takes effect, stay Order of Tribunal effective, stay R.S.O. 1980, c. 274

effect immediately but the Tribunal may grant a stay until disposition of the appeal. 1971, c. 50, s. 59 (2), *part*; 1972, c. 1, s. 23 (5).

Resident
require-
ments re
individuals

8.—(1) Subject to subsection (2), no individual shall carry on business in Ontario as a mortgage broker unless,

- (a) he is a resident; or
- (b) where he is a member of a partnership or an association, syndicate or organization of individuals, every member thereof is a resident.

Idem

(2) An individual who was carrying on business as a registered mortgage broker immediately before the 2nd day of October, 1973, and who on that day was in contravention of subsection (1), may continue to carry on business subject to the provisions of this Act if,

- (a) his interest or any part thereof is not transferred to or for the benefit of a non-resident; or
- (b) where he is a member of a partnership or an association, syndicate or organization of individuals, no person who is a non-resident is admitted as a member thereof. 1973, c. 103, s. 3, *part*.

Resident
require-
ments re
corporations

9.—(1) No corporation shall carry on business in Ontario as a mortgage broker if,

- (a) the total number of equity shares of the corporation beneficially owned, directly or indirectly, by non-residents or over which non-residents exercise control or direction exceeds 25 per cent of the total number of issued and outstanding equity shares of the corporation;
- (b) the total number of equity shares of the corporation beneficially owned, directly or indirectly, by a non-resident over which he exercises control or direction, together with other shareholders associated with him, if any, exceeds 10 per cent of the total number of issued and outstanding equity shares of the corporation; or
- (c) the corporation is not incorporated by or under an Act of Ontario, Canada or any province of Canada. 1973, c. 103, s. 3, *part*.

(2) In calculating the total number of equity shares of the ^{Idem} corporation beneficially owned or controlled for the purposes of this section, the total number shall be calculated as the total of all the shares actually owned or controlled, but each share that carries the right to more than one vote shall be calculated as the number of shares equalling the total number of votes it carries. 1974, c. 28, s. 2.

(3) A corporation that was carrying on business as a regis- ^{Idem}tered mortgage broker immediately before the 2nd day of October, 1973, and which on that day was in contravention of subsection (1), may continue to carry on business, subject to the provisions of this Act,

(a) in the case of a contravention of clause (1) (a) or (b), if no transfer of equity shares or beneficial interest therein including their control or direction is made to a non-resident or person associated with him excepting when the result would be in compliance with clauses (1) (a) and (b); or

(b) in the case of a contravention of clause (1) (c), until the 1st day of January, 1975, but a corporation incorporated on or after the 30th day of October, 1973 and before the 1st day of January, 1975 by or under an Act of Ontario, Canada or a province of Canada may, notwithstanding clauses (1) (a) and (b), be registered in the place of the first-mentioned corporation if the equity shares of the new corporation or beneficial interest therein, including their control or direction, held by non-residents are held directly or indirectly in the same manner as the equity shares of the first-mentioned corporation, but where the new corporation is in contravention of clause (1) (a) or (b), clause (a) of this subsection applies.

(4) For the purpose of this section, a shareholder shall be ^{Associated} deemed to be associated with another shareholder if, ^{shareholders}

(a) one shareholder is a corporation of which the other shareholder is an officer or director;

(b) one shareholder is a partnership of which the other shareholder is a partner;

(c) one shareholder is a corporation that is controlled, directly or indirectly, by the other shareholder;

- (d) both shareholders are corporations and one shareholder is controlled, directly or indirectly, by the same individual or corporation that controls, directly or indirectly, the other shareholder;
- (e) both shareholders are members of a voting trust where the trust relates to shares of a corporation; or
- (f) both shareholders are associated within the meaning of clauses (a) to (e) with the same shareholder.

Joint
ownership

(5) For the purpose of this section, where an equity share of the corporation is held jointly and one or more of the joint holders thereof is a non-resident, the share shall be deemed to be held by a non-resident. 1973, c. 103, s. 3, *part*.

Further
applications

10. A further application for registration may be made upon new or other evidence or where it is clear that material circumstances have changed. R.S.O. 1970, c. 278, s. 21; 1975, c. 28, s. 2, *part*.

Interpre-
tation

11.—(1) In sections 11 to 19,

- (a) “mortgage transaction” means the borrowing of money on the security of real property or the assignment of a mortgage for consideration;
- (b) “subdivision” means improved or unimproved land divided or proposed to be divided into five or more lots or other units for the purpose of sale or lease and includes land divided or proposed to be divided into condominium units.

Application
of ss. 12 to 19

(2) Sections 12 to 19 apply to mortgage transactions on the security of lots or units in a subdivision outside Ontario where the mortgagor or assignor is the owner of an interest in five or more such lots or units or has been the owner of such an interest at any time in the preceding five years.

Idem

(3) Sections 12 to 19 do not apply to mortgage transactions in which the mortgagee or assignee is a bank to which the *Bank Act* (Canada) applies or a loan or trust company registered under the *Loan and Trust Corporations Act* or an insurance company licensed under the *Insurance Act*. 1975, c. 28, s. 2, *part*.

12.—(1) No person shall enter into or negotiate a mortgage transaction in respect of a lot or unit of land in a subdivision located outside Ontario unless, Mortgage transactions where land outside Ontario

- (a) a prospectus containing the prescribed information has been filed with the Registrar and the Registrar has issued a certificate of acceptance;
- (b) he is a registered mortgage broker or the mortgage transaction is negotiated by a registered mortgage broker;
- (c) a copy of the prospectus or such shorter form of the prospectus as the Registrar approves for distribution to the public has been delivered to the prospective lender or assignee;
- (d) the prospective lender or assignee has in writing acknowledged receipt of a copy of a prospectus or shorter form of prospectus and has been afforded an opportunity to read it.

(2) Every acknowledgment referred to in subsection (1) shall be retained by the mortgagor, assignor or mortgage broker and be available for inspection by the Registrar for a period of not less than three years. Inspection of acknowledgments

(3) A lender or assignee who has entered into a mortgage transaction to which subsection (1) applies is entitled to rescission of the contract if, Rescission

- (a) subsection (1) has not been complied with; and
- (b) written notice of exercising the right of rescission is served on the mortgagor, assignor or mortgage broker within ninety days of the signing of the contract.

(4) In an action for rescission under subsection (3), the onus of proving compliance with subsection (1) rests upon the mortgagor or assignor. Onus

(5) The right of rescission provided in this section is in addition to any other rights that the lender or assignee may have in respect of the contract or arrangement. 1975, c. 28, s. 2, *part.* Rights reserved

13. Each prospectus submitted to the Registrar for filing shall be accompanied by, Material filed with prospectus

- (a) an affidavit of the proposed mortgagor or assignor or, where the proposed mortgagor or assignor is a corporation, any two officers or an officer and a director, as to the correctness of every matter of fact stated in the prospectus;
- (b) a copy of every plan referred to in the prospectus;
- (c) a copy of every form of contract referred to in the prospectus;
- (d) such documents as the Registrar may require to support any statement of fact, proposal or estimate set out in the prospectus;
- (e) such financial particulars of the proposed mortgagor or assignor as the Registrar may require; and
- (f) the prescribed fees. 1975, c. 28, s. 2, *part*.

Inquiries
by
Registrar

14.—(1) The Registrar may make such inquiries with respect to a prospectus as are necessary to determine whether a certificate of acceptance should be issued, including,

- (a) an examination of the subdivision and any of the surrounding circumstances; and
- (b) the obtaining of reports from public authorities or others within or outside Ontario.

Costs

(2) The reasonable and proper costs of such inquiries or reports shall be borne by the person on whose behalf the prospectus was filed. 1975, c. 28, s. 2, *part*.

Refusal of
certificate
of
acceptance

15.—(1) The Registrar shall grant a certificate of acceptance except where it appears that,

- (a) the prospectus contains any statement, promise or forecast that is misleading, false or deceptive, or has the effect of concealing material facts;
- (b) adequate provision has not been made for the protection of deposits or other funds or for assurance of title or other interest contracted for;
- (c) the prospectus fails to comply in any substantial respect with any of the requirements prescribed;

(d) the requirements of section 13 have not been complied with in any substantial respect;

(e) the proposed methods of offering do not accord with standard real estate practices in Ontario.

(2) Where the Registrar proposes to refuse to grant a ^{Application of s. 7} certificate of acceptance, he shall serve notice of his proposal to refuse on the person on whose behalf the prospectus was filed and section 7 applies with necessary modifications to the proposal in the same manner as to a proposal to refuse to register an applicant. 1975, c. 28, s. 2, *part.*

16.—(1) Where it appears to the Registrar, subsequent to ^{Revocation of certificate of acceptance} the filing of a prospectus and the granting of a certificate of acceptance therefor, that any of the conditions referred to in subsection 15 (1) exist or there has been any contravention of the Act or regulations, he may revoke the certificate of acceptance, which thereupon shall be deemed not to be issued.

(2) Subject to subsection (3), the Registrar shall not revoke ^{Application of s. 7} a certificate of acceptance and make an order under subsection (1) without serving notice of his proposal to revoke the certificate and make the order, together with written reasons therefor, on the person on whose behalf the prospectus was filed, and section 7 applies with necessary modifications to the proposal in the same manner as to a proposal by the Registrar to revoke a registration.

(3) Where the Registrar proposes to revoke a certificate ^{Interim suspension} of acceptance, the Registrar may, where the Registrar considers it to be necessary in the public interest, by order temporarily suspend the certificate of acceptance and the order shall take effect immediately and, where a hearing is required, the order expires fifteen days from the date of the notice requiring the hearing unless the hearing is commenced in which case the Tribunal holding the hearing may extend the time of expiration until the hearing is concluded. 1975, c. 28, s. 2, *part.*

17.—(1) If a change occurs with regard to any of the ^{Amendment of prospectus} matters set out in any prospectus,

(a) that would have the effect of rendering a statement in the prospectus false or misleading; or

(b) that brings into being a fact or proposal that should have been disclosed in the prospectus if the fact or proposal had existed at the time of filing,

the person who filed the prospectus shall, within twenty days of the change occurring, notify the Registrar in writing of the change and shall file an amendment to the prospectus or a new prospectus as the Registrar may direct.

Application
of ss. 13-16

(2) Sections 13 to 16 apply with necessary modifications where a prospectus is amended or a new prospectus filed under subsection (1). 1975, c. 28, s. 2, *part*.

Expiration of
certificate of
acceptance

18. A certificate of acceptance expires twelve months after it is issued and shall thereupon be deemed not to be issued, subject to the right to file a new prospectus and obtain a certificate of acceptance therefor in accordance with this Act. 1975, c. 28, s. 2, *part*.

Advertising

19. No person shall publish or cause to be published any advertisement for mortgage transactions on a lot or unit in a subdivision located outside Ontario until the advertisement has been approved by the Registrar. 1975, c. 28, s. 2, *part*.

Investigation
of
complaints

20.—(1) Where the Registrar receives a complaint in respect of a mortgage broker and so requests in writing, the mortgage broker shall furnish the Registrar with such information respecting the matter complained of as the Registrar requires.

Idem

(2) The request under subsection (1) shall indicate the nature of the inquiry involved.

Idem

(3) For the purposes of subsection (1), the Registrar or any person designated in writing by him may at any reasonable time enter upon the business premises of the mortgage broker to make an inspection in relation to the complaint. R.S.O. 1970, c. 278, s. 22.

Inspection

21.—(1) The Registrar or any person designated by him in writing may at any reasonable time enter upon the business premises of the registrant to make an inspection to ensure that the provisions of this Act and the regulations relating to registration and the maintenance of trust accounts are being complied with.

Idem

(2) Where the Registrar has reasonable and probable grounds to believe that any person is acting as a mortgage broker while unregistered, the Registrar or any person

designated by him in writing may at any reasonable time enter upon such person's business premises to make an inspection for the purpose of determining whether or not the person is in contravention of section 4. R.S.O. 1970, c. 278, s. 23.

22.—(1) Upon an inspection under section 20 or 21, the person inspecting, Powers on inspection

(a) is entitled to free access to all books of account, cash, documents, bank accounts, vouchers, correspondence and records of the person being inspected that are relevant for the purposes of the inspection; and

(b) may, upon giving a receipt therefor, remove any material referred to in clause (a) that relates to the purpose of the inspection for the purpose of making a copy thereof, provided that such copying is carried out with reasonable dispatch and the material in question is promptly thereafter returned to the person being inspected,

and no person shall obstruct the person inspecting or withhold or destroy, conceal or refuse to furnish any information or thing required by the person inspecting for the purposes of the inspection. R.S.O. 1970, c. 278, s. 24 (1); 1971, c. 50, s. 59 (3).

(2) Any copy made as provided in subsection (1) and purporting to be certified by an inspector is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original. R.S.O. 1970, c. 278, s. 24 (2). Admissibility of copies

23. The Minister may by order appoint a person to make an investigation into any matter to which this Act applies as may be specified in the Minister's order and the person appointed shall report the result of his investigation to the Minister and, for the purposes of the investigation, the person making it has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such investigation as if it were an inquiry under that Act. 1971, c. 50, s. 59 (4), *part*. Investigations on order of Minister
R.S.O. 1980, c. 411

24.—(1) Where, upon a statement made under oath, the Director believes on reasonable and probable grounds that any person has, Investigations by Director

- (a) contravened any of the provisions of this Act or the regulations;
- (b) committed an offence under the *Criminal Code* (Canada) or under the law of any jurisdiction that is relevant to his fitness for registration under this Act;
- (c) by any false, misleading or deceptive statement or advertisement, representation or promise, or by any dishonest concealment of material facts, induced or attempted to induce any person to borrow money or to be responsible for the repayment thereof or to agree to the terms of any transaction with respect to money lent on the security of a mortgage; or
- (d) induced or attempted to induce any person to pay or be responsible for the payment of excessive or exorbitant fees or expenses in connection with a loan on the security of a mortgage,

the Director may by order appoint one or more persons to make an investigation to ascertain whether such a contravention of the Act or regulation or the commission of such an offence or such conduct has occurred and the person appointed shall report the result of his investigation to the Director.

Powers of
investigator

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the affairs of the person in respect of whom the investigation is being made and may,

- (a) upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, papers, documents and things relevant to the subject-matter of the investigation; and
- (b) inquire into negotiations, transactions, loans, borrowings made by or on behalf of or in relation to such person and into property, assets or things owned, acquired or alienated in whole or in part by him or any person acting on his behalf that are relevant to the subject-matter of the investigation,

and for the purposes of the inquiry, the person making the investigation has the powers of a commission under

Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act. R.S.O. 1980, c. 411

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, papers, documents or things relevant to the subject-matter of the investigation. Obstruction of investigator

(4) Where a justice of the peace is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, papers, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the justice of the peace may, whether or not an inspection has been made or attempted under clause (2) (a), issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, papers, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the justice of the peace, by the order, authorizes the person making the investigation to make the search at night. Search warrant

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, papers, documents or things examined under clause (2) (a) or subsection (4) relating to the person whose affairs are being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, papers or documents, but such copying shall be carried out with reasonable dispatch and the books, papers or documents in question shall be promptly thereafter returned to the person whose affairs are being investigated. Removal of books, etc.

(6) Any copy made as provided in subsection (5) and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, paper or document and its contents. Admissibility of copies

(7) The Minister or Director may appoint any expert to examine books, papers, documents or things examined under clause (2) (a) or under subsection (4). Appointment of experts 1971, c. 50, s. 59 (4), *part.*

Matters
confidential

25.—(1) Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 20, 21, 22, 23 or 24 shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations; or
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

Testimony
in civil suit

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceedings with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations. 1971, c. 50, s. 59 (4), *part*.

Order to
refrain from
dealing with
assets

26.—(1) Where,

- (a) an investigation of any person has been ordered under section 24; or
- (b) criminal proceedings or proceedings in relation to a contravention of any Act or regulation are about to be or have been instituted against a person that are connected with or arise out of the business in respect of which such person is registered,

the Director, if he believes it advisable for the protection of clients or customers of the person referred to in clause (a) or (b) may, in writing or by telegram, direct any person having on deposit or under control or for safekeeping any assets or trust funds of the person referred to in clause (a) or (b) to hold such assets or trust funds or direct the person referred to in clause (a) or (b) to refrain from withdrawing any such assets or trust funds from any person having any of them on deposit or under control or for safekeeping or to hold such assets or any trust funds of clients, customers or others in his possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), the *Judicature Act*, the *Corporations Act*, the *Business Corporations Act* or the *Winding-up Act* (Canada) or until the

Director revokes or the Tribunal cancels such direction or consents to the release of any particular assets or trust funds from the direction but, in the case of a bank, loan or trust company, the direction only applies to the office, branches or agencies thereof named in the direction. 1971, c. 50, s. 59 (5).

(2) Subsection (1) does not apply where the person referred to in clause (1) (a) or (b) files with the Director, Bond in lieu

(a) a personal bond accompanied by collateral security;

(b) a bond of a guarantee company approved under the *Guarantee Companies Securities Act*; or

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(c) a bond of a guarantor, other than a guarantee company, accompanied by collateral security,

in such form, terms and amount as the Director may determine.

(3) Any person in receipt of a direction given under subsection (1) if in doubt as to the application of the direction to any assets or trust funds, or in case of a claim being made thereto by a person not named in the direction, may apply to a judge or local judge of the Supreme Court who may direct the disposition of such assets or trust funds and may make such order as to costs as seems just. Application for direction

(4) In any of the circumstances mentioned in clause (1) (a) or (b), the Director may in writing or by telegram notify any land registrar that proceedings are being or are about to be taken that may affect land belonging to the person referred to in the notice, and the notice shall be registered against the lands mentioned therein and has the same effect as the registration of a certificate of *lis pendens* except that the Director may in writing revoke or modify the notice. Notice to land registrar R.S.O. 1970, c. 278, s. 26 (2-4).

(5) Any person referred to in clause (1) (a) or (b) in respect of whom a direction has been given by the Director under subsection (1) or any person having an interest in land in respect of which a notice has been registered under subsection (4) may, at any time, apply to the Tribunal for cancellation in whole or in part of the direction or registration and the Tribunal shall dispose of the application after a hearing and may, if it finds that such a direction or registration is not required in whole or in part for the protection Cancellation of direction or registration

of clients or customers of the applicant or of other persons interested in the land or that the interests of other persons are unduly prejudiced thereby, cancel the direction or registration in whole or in part, and the applicant, the Director and such other persons as the Tribunal may specify are parties to the proceedings before the Tribunal. 1971, c. 50, s. 59 (6).

Notice of
changes

27.—(1) Every mortgage broker shall, within five days after the event, notify the Registrar in writing of,

- (a) any change in his address for service;
- (b) any change in the officers in the case of a corporation or of the members in the case of a partnership.

Idem

(2) The Registrar shall be deemed to be notified under subsection (1) on the day on which he is actually notified or, where the notification is by mail, on the day of mailing.

Financial
statements

(3) Every mortgage broker shall, when required by the Registrar with the approval of the Director, file a financial statement showing the matters specified by the Registrar and signed by the mortgage broker and certified by a person licensed under the *Public Accountancy Act*.

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c. 405

Statement
confidential

(4) The information contained in a financial statement filed under subsection (3) is confidential and no person shall otherwise than in the ordinary course of his duties communicate any such information or allow access to or inspection of the financial statement. R.S.O. 1970, c. 278, s. 27.

False
advertising

28. Where the Registrar believes on reasonable and probable grounds that a mortgage broker is making false, misleading or deceptive statements in any advertisement, circular, pamphlet or similar material, the Registrar may order the immediate cessation of the use of such material and section 7 applies with necessary modifications to the order in the same manner as to a proposal by the Registrar to refuse registration and the order of the Registrar shall take effect immediately, but the Tribunal may grant a stay until the Registrar's order becomes final. 1971, c. 50, s. 59 (7).

Service

29.—(1) Any notice or order required to be given or served under this Act or the regulations is sufficiently given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the latest address for service

appearing on the records of the Ministry of Consumer and Commercial Relations. R.S.O. 1970, c. 278, s. 29 (1); 1972, c. 1, s. 45 (3).

(2) Where service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice or order until a later date. 1971, c. 50, s. 59 (8). Where service deemed to be made

(3) Notwithstanding subsections (1) and (2), the Tribunal may order any other method of service in respect of any matter before the Tribunal. R.S.O. 1970, c. 278, s. 29 (3). Exception

30.—(1) Where it appears to the Director that any person does not comply with any provision of this Act, the regulations or an order made under this Act, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights he may have, the Director may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application, the judge may make such order or such other order as the judge thinks fit. Restraining orders

(2) An appeal lies to the Divisional Court from an order made under subsection (1). R.S.O. 1970, c. 278, s. 30. Appeal

31.—(1) Every person who, knowingly, Offences

- (a) furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations;
- (b) fails to comply with any order, direction or other requirement made under this Act; or
- (c) contravenes any provision of this Act or the regulations,

and every director or officer of a corporation who knowingly concurs in such furnishing, failure or contravention is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

(2) Where a corporation is convicted of an offence under subsection (1), the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein. Corporations

Consent of
Minister

(3) No proceedings under this section shall be instituted except with the consent of the Minister.

Limitation

(4) No proceeding under clause (1)(a) shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Director.

Idem

(5) No proceeding under clause (1)(b) or (c) shall be commenced more than two years after the time when the subject-matter of the proceeding arose. R.S.O. 1970, c. 278, s. 31.

Certificate
as evidence

32. A statement as to,

- (a) the registration or non-registration of any person;
- (b) the filing or non-filing of any document or material required or permitted to be filed with the Registrar;
- (c) the time when the facts upon which proceedings are based first came to the knowledge of the Director;
or
- (d) any other matter pertaining to such registration, non-registration, filing or non-filing,

purporting to be certified by the Director is, without proof of the office or signature of the Director, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution. R.S.O. 1970, c. 278, s. 32; 1971, c. 50, s. 59 (9).

Regulations

33. The Lieutenant Governor in Council may make regulations,

- (a) exempting persons or classes of persons from this Act or the regulations or any provision thereof in addition to those exempted under section 2;
- (b) governing applications for registration or renewal of registration and prescribing terms and conditions of registration;
- (c) requiring the payment of fees on application for registration or renewal of registration and prescribing the amount thereof;
- (d) prescribing forms for the purposes of this Act and providing for their use;

- (e) requiring and governing the maintenance of trust accounts by mortgage brokers and prescribing the moneys that shall be held in trust and the terms and conditions thereof;
- (f) requiring and governing the books, accounts and records that shall be kept by mortgage brokers;
- (g) prescribing the information that mortgage brokers shall furnish to borrowers;
- (h) requiring mortgage brokers to make returns and furnish information to the Registrar;
- (i) requiring any information required to be furnished or contained in any form or return to be verified by affidavit;
- (j) prescribing further procedures respecting the conduct of matters coming before the Tribunal;
- (k) providing for the responsibility for payment of witness fees and expenses in connection with proceedings before the Tribunal and prescribing the amounts thereof;
- (l) prescribing the fees payable upon the filing of a prospectus;
- (m) prescribing the information required to be contained in a prospectus. R.S.O. 1970, c. 278, s. 33; 1973, c. 103, s. 4; 1975, c. 28, s. 3.

